

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Chairman;
Mark Acton, Vice Chairman;
Tony Hammond; and
Nanci E. Langley

Competitive Product Prices
GEPS 7 (MC2016-196)
Negotiated Service Agreements

Docket No. CP2017-217

ORDER APPROVING ADDITIONAL GLOBAL EXPEDITED PACKAGE SERVICES 7
NEGOTIATED SERVICE AGREEMENT

(Issued July 11, 2017)

I. INTRODUCTION

The Postal Service seeks to include an additional GEPS 7 agreement (Agreement) within the GEPS 7 product.¹ For the reasons discussed below, the Commission approves the Postal Service's request.

¹ Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 7 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, June 28, 2017 (Notice); Notice of the United States Postal Service of Filing Errata Concerning Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 7 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, July 7, 2017 (Notice of Errata). The Commission deems all Postal Service references in the Notice that refer to the contract filed with the Notice to instead refer to the revised contract filed with the Notice of Errata. All references to the Agreement in this Order refer to the revised contract filed with the Notice of Errata.

II. BACKGROUND

Agreements included within the GEPS 7 product offer price incentives to mailers that use Priority Mail Express International, Priority Mail International, or First-Class Package International Service.

On June 28, 2017, in accordance with 39 C.F.R. § 3015.5, the Postal Service filed its Notice, along with supporting documents. In the Notice, the Postal Service asserts that the Agreement is functionally equivalent to the baseline agreement for the GEPS 7 product and requests that the Agreement be added to the existing GEPS 7 product. Notice at 2. Among the supporting documents, the Postal Service included a copy of the Governors' Decision authorizing the GEPS 7 product, the Agreement proposed to be added to the product, a certification of compliance with 39 U.S.C. § 3633(a), and financial workpapers. In addition, the Postal Service submitted an application for non-public treatment of materials requesting that unredacted portions of the Agreement, customer-identifying information, and related financial information remain under seal. *Id.* Attachment 4.

The Agreement is intended to take effect July 15, 2017. Notice at 3. It is set to expire July 31, 2018. *See id.*

On June 29, 2017, the Commission issued a notice establishing the instant docket, appointing a Public Representative, and providing interested persons with an opportunity to comment.²

On June 30, 2017, Chairman's Information Request No. 1 was issued.³ CHIR No. 1 asked the Postal Service to confirm that the title of one of the price charts in the agreement was mislabeled. *See* CHIR No. 1, question 1. CHIR No. 1 also asked the Postal Service to clarify where the contract permitted First-Class International Package Service mailpieces to be tendered, and directed it to file a revised contract. *See id.*,

² Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, June 29, 2017.

³ Chairman's Information Request No. 1, June 30, 2017 (CHIR No. 1).

question 2. The Postal Service filed a response on July 7, 2017.⁴ On the same day the Postal Service filed a notice of errata containing a revised contract. Notice of Errata. The revised contract corrected the mislabeling and clarified where First-Class International Package Service mailpieces may be tendered. See Notice of Errata, Attachment 1, Annex 1 at 8; Notice of Errata, Attachment 1, Annex 2 at 3.

III. COMMENTS

The Public Representative filed comments on July 5, 2017.⁵ No other comments were received. Based upon a review of the Postal Service's filing,⁶ including the information filed under seal with the Commission, the Public Representative concludes that the Original Contract is functionally equivalent to the baseline agreement and that the Original Contract should generate sufficient revenue to cover its costs. PR Comments at 3. He notes differences between the Original Contract and the baseline agreement but states that their similar cost and market characteristics support the conclusion that the Original Contract and the baseline agreement are functionally equivalent. *Id.* He further notes that the Commission will have an opportunity to review the financial results for the Original Contract in its Annual Compliance Determination (ACD). *Id.* at 4.

IV. COMMISSION ANALYSIS

The Commission's responsibilities in this case are to ensure that the Agreement: (1) is functionally equivalent to the baseline agreement established for the GEPS 7

⁴ Response of the United States Postal Service to Chairman's Information Request No. 1, July 7, 2017.

⁵ Public Representative Comments on Postal Service Notice Concerning an Additional Global Expedited Package Services 7 Negotiated Service Agreement, July 5, 2017 (PR Comments).

⁶ The Public Representative reviewed the contract filed along with the Notice (Original Contract), and filed his comments prior to the Postal Service's filing of a revised contract along with the Notice of Errata. The Public Representative's comments apply equally to the revised contract because the changes made in the revised contract only indirectly affect the cost coverage analysis.

product; and (2) satisfies the requirements of 39 U.S.C. § 3633 and applicable Commission rules (39 C.F.R. §§ 3015.5 and 3015.7).

Functional equivalence. In Order No. 3542, the Commission approved the addition of GEPS 7 to the competitive product list and designated an agreement as the baseline agreement for assessing the functional equivalence of agreements proposed for inclusion within the GEPS 7 product.⁷

The Postal Service asserts that its filing demonstrates that the Agreement is functionally equivalent to the baseline agreement, and requests that the Agreement be included within the GEPS 7 product. Notice at 2. It asserts that the Agreement fits within the draft Mail Classification Schedule language for the GEPS 7 product. *Id.* at 3. The Postal Service also asserts that the Agreement and the baseline agreement possess similar cost and market characteristics and the same functional terms but states that prices may differ. *Id.* at 4. The Postal Service identifies numerous differences between the Agreement and the baseline agreement but asserts that these differences do not affect the fundamental service being offered or the fundamental structure of the Agreement.⁸

The Commission has reviewed the Postal Service's reasons for asserting that the Agreement shares similar cost and market characteristics with the baseline agreement; meets the pricing formula and falls within the classification established in the Governors' Decision authorizing this product; and comports with 39 U.S.C. § 3633 and applicable Commission rules. It also has considered the Public Representative's comments. The Commission concludes that the Agreement is substantially similar to the baseline agreement and that the differences between them do not fundamentally alter either the service the Postal Service will provide under the Agreement or the structure of the

⁷ See Docket Nos. MC2016-196 and CP2016-280, Order Adding Global Expedited Package Services 7 to the Competitive Product List and Designating Baseline Agreement, September 27, 2016, at 7 (Order No. 3542).

⁸ Differences include, among others, revisions to existing articles, the renumbering of several articles, and the inclusion of new articles. *Id.* at 5.

Agreement. The Commission therefore finds that the Agreement may be included within the GEPS 7 product.

Cost considerations. The Commission reviews each competitive product to ensure that it covers its attributable costs, does not cause market dominant products to subsidize competitive products as a whole, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3015.5 and 3015.7. As long as the revenue generated by a product exceeds its attributable costs, the product is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, a product that covers its attributable costs is likely to comply with 39 U.S.C. § 3633(a).

The Commission has reviewed the Postal Service's filing, including supporting financial analyses provided under seal, the revised contract filed with the Notice of Errata, and the Public Representative's comments. Based on this review, the Commission finds that the Agreement should cover its attributable costs. Consequently, the Commission finds that the addition of the Agreement to the GEPS 7 product should allow the product to continue to comply with 39 U.S.C. § 3633(a)(2). Because it finds that the addition of the Agreement to the GEPS 7 product should allow the product to cover its attributable costs, the Commission finds that the addition of the Agreement to the product should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Similarly, it finds the addition of the Agreement to the GEPS 7 product is unlikely to prevent competitive products as a whole from contributing an appropriate share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). Accordingly, a preliminary review of the Agreement indicates it is consistent with section 3633(a). The Commission will review the Agreement's cost coverage, the cost coverage of the GEPS 7 product, and the contribution of competitive products as a whole to the Postal Service's institutional costs in the ACD to ensure that they continue to comply with 39 U.S.C. § 3633(a).

Other considerations. The intended effective date of the Agreement is July 15, 2017. Notice at 3. The Postal Service shall promptly notify the Commission should there be a change in the effective date of the Agreement. The contract is set to expire July 31, 2018. See *id.* If the Agreement is terminated prior to the scheduled expiration date, the Postal Service shall promptly file notice of such termination with the Commission in this docket.

V. ORDERING PARAGRAPHS

It is ordered:

1. The Agreement filed in Docket No. CP2017-217 is included within the Global Expedited Package Services 7 (MC2016-196) product. The revision to the Mail Classification Schedule appears below the signature of this Order and is effective immediately.
2. The Postal Service shall promptly notify the Commission should there be a change in the effective date of the Agreement.
3. The Postal Service shall promptly file notice of the Agreement's termination with the Commission in this docket if the Agreement is terminated prior to the scheduled expiration date.

By the Commission.

Stacy L. Ruble
Secretary

CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the Mail Classification Schedule. New text is underlined. Deleted text is struck through.

Part B—Competitive Products

2500 Negotiated Service Agreements

2510 Outbound International

2510.3 Global Expedited Package Services (GEPS) Contracts

2510.3.6 Products Included in Group (Agreements)

Each product is followed by a list of agreements included within that product.

- GEPS 7
 Baseline Reference
 Docket Nos. MC2016-196 and CP2016-280
 PRC Order No. 3542, September 27, 2016
 Included Agreements

CP2017-217, expires July 31, 2018
